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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1571

State of Minnesota,
Respondent,

vs.

Leontaye A. Slaughter-McCaskel,
Appellant.

Filed July 20, 2020
Affirmed
Connolly, Judge

Anoka County District Court
File No. 02-CR-18-8323

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

In this direct appeal from a judgment of conviction for felony domestic assault, appellant argues that the district court committed reversible error when defining the crime in its jury instructions. Because any error in the jury instructions did not affect appellant's substantial rights, we affirm.

FACTS

Respondent State of Minnesota charged appellant Leontaye Slaughter-McCaskel with one count of domestic assault by strangulation under Minn. Stat. § 609.2247, subd. 2 (2018). The state later amended the complaint and added a charge of felony domestic assault—intentionally inflict or attempt to inflict bodily harm—under Minn. Stat. § 609.2242, subds. 1(2), 4 (2018).

At trial, T.H., the victim, testified that appellant punched and choked her after she refused to give him a ride to his father's residence. T.H. also explained that appellant called her after he was charged and told her that she needed to drop the charge. Appellant did not testify or call any witnesses.

In its final jury instructions, the district court gave this definition for the felony-domestic-assault charge: "[W]hoever . . . intentionally inflicts or attempts to inflict bodily harm upon another is guilty of a crime, if the person assaulted is a member of the defendant's family or household." It then defined the elements of that crime:

> First, [appellant] assaulted [T.H.] The term "assault" as used in this case is the intentional infliction of bodily harm upon another.

> . . . .
>
> Second, the victim was a member of [appellant's] family or household. "Family or household member" includes persons involved in a significant romantic or sexual relationship.
>
> Third, [appellant's] acts took place on or about December 19, 2018, in Anoka County.[1]

The jury found appellant guilty of felony domestic assault—inflict bodily harm—but acquitted him of domestic assault by strangulation. Based on this guilty verdict and appellant's criminal-history score, the district court imposed a 27-month prison sentence. On appeal, appellant challenges the district court's final jury instructions on the felony-domestic-assault charge.

D E C I S I O N

I. Standard of Review

To begin, we observe that the parties dispute the applicable standard of review. Appellant characterizes the alleged error as structural and seeks reversal despite not objecting to the district court's jury instructions. In response, the state asserts that we should review only for plain error.

Errors in criminal cases are generally classified as either trial errors or structural errors. *State v. Kuhlmann*, 806 N.W.2d 844, 851 (Minn. 2011). Structural errors represent fundamental constitutional errors that defy harmless-error analysis and require automatic reversal of a conviction. *Neder v. United States*, 527 U.S. 1, 7, 119 S. Ct. 1827, 1833 (1999). Courts have found only a few errors to be so perverse as to constitute structural

[1] Because appellant stipulated that he had two prior qualifying convictions, the jury was not instructed on that element of felony domestic assault.

error. *See, e.g.*, *Sullivan v. Louisiana*, 508 U.S. 275, 281-82, 113 S. Ct. 2078, 2083 (1993) (constitutionally deficient reasonable-doubt jury instruction); *Waller v. Georgia*, 467 U.S. 39, 49-50, 104 S. Ct. 2210, 2217 (1984) (denial of public-trial right); *McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8, 104 S. Ct. 944, 950 n.8 (1984) (denial of the right to self-representation at trial); *State v. Dorsey*, 701 N.W.2d 238, 252-53 (Minn. 2005) (presence of a biased judge as fact-finder); *State v. Logan*, 535 N.W.2d 320, 324-25 (Minn. 1995) (denial of right to impartial jury by not dismissing biased juror).

In contrast, trial errors occur while the case is presented to the jury and can be assessed to determine their prejudicial effect. *Kuhlmann*, 806 N.W.2d at 851. Most errors are trial errors and are subject to review to decide whether their alleged prejudicial effect requires reversal and a new trial. *See, e.g.*, *Carella v. California*, 491 U.S. 263, 266, 109 S. Ct. 2419, 2421 (1989) (jury instruction containing erroneous conclusive presumption); *Crane v. Kentucky*, 476 U.S. 683, 691, 106 S. Ct. 2142, 2147 (1986) (erroneous exclusion of the defendant's testimony about the circumstances of his confession); *State v. Finnegan*, 784 N.W.2d 243, 251 n.6 (Minn. 2010) (continuing the trial in the defendant's absence).

Here, appellant contends that the district court erred by including the word "attempt" in its jury instruction defining the crime of felony domestic assault. In appellant's view, this instruction lessened the state's burden of proof and constituted structural error.[2] For

[2] Appellant does not argue that the district court's jury instructions directed a verdict for the state on any element. *Cf. State v. Moore*, 699 N.W.2d 733, 738 (Minn. 2005) (holding that erroneous jury instruction that deprived defendant of right to have jury decide existence of all offense elements was not subject to harmless-error review).

support, appellant cites *Sullivan* and asserts that its holding mandates automatic reversal here.

In *Sullivan*, the Supreme Court considered "whether a constitutionally deficient reasonable-doubt instruction may be harmless error." 508 U.S. at 276, 113 S. Ct. at 2080. Because this deficient instruction "vitiate[d] *all* the jury's findings" and carried uncertain consequences, the Supreme Court declined to apply harmless-error review and reversed the defendant's conviction using structural-error analysis. *Id.* at 281-82, 113 S. Ct. at 2082-83.

Unlike *Sullivan*, appellant challenges the language within the district court's jury instruction on an offense, not its reasonable-doubt instruction. It seems evident that this argument seeks review of a trial error. We find support for this conclusion in other cases discussing the interplay between trial errors and structural errors in the jury-instruction context. For instance, the Supreme Court has held that an erroneous instruction on an invalid alternative theory of guilt is nonstructural. *Hedgpeth v. Pulido*, 555 U.S. 57, 61-62, 129 S. Ct. 530, 532 (2008). So too has the Supreme Court held that the erroneous omission of an offense element does not constitute structural error. *Neder*, 527 U.S. at 10-11, 119 S. Ct. at 1834. And the Supreme Court has applied a harmless-error analysis when a trial court has misstated offense elements. *See Pope v. Illinois*, 481 U.S. 497, 503, 107 S. Ct. 1918, 1922 (1987) (use of wrong term when defining standard in obscenity case); *Rose v. Clark*, 478 U.S. 570, 579-80, 106 S. Ct. 3101, 3107 (1986) (erroneous burden-shifting on offense element).

Minnesota courts have reached similar conclusions when analyzing whether a jury-instruction error is a trial error or structural error. For example, our supreme court has concluded that the erroneous omission of an offense element represents a trial error. *State v. Watkins*, 840 N.W.2d 21, 27 (Minn. 2013). Likewise, "failure to properly instruct the jury on all elements of the offense charged is plain error." *State v. Vance*, 734 N.W.2d 650, 658 (Minn. 2007), *overruled on other grounds by State v. Fleck*, 810 N.W.2d 303 (Minn. 2012).

Based on these principles, appellant's alleged error is subject to review as a trial error. The asserted instructional error did not pervade the whole trial or affect its fundamental fairness. Nor does the alleged error here have "unquantifiable and indeterminate" consequences. *See Sullivan*, 508 U.S. at 282, 113 S. Ct. at 2083. Thus, this case does not fit into the narrow class of cases requiring automatic reversal under structural-error analysis.

II. The District Court's Jury Instructions

Having classified the alleged error as a trial error, we next consider appellant's alternative argument that the district court plainly erred. District courts have wide discretion in selecting jury instructions. *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). When viewed in their entirety, jury instructions must fairly and adequately convey the applicable law. *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012).

Because appellant never objected to the district court's jury instructions, we review the challenged instruction under the plain-error doctrine. *State v. Hayes*, 831 N.W.2d 546, 555 (Minn. 2013); *see also* Minn. R. Crim. P. 31.02 ("Plain error affecting a substantial

right can be considered by the court . . . on appeal even if it was not brought to the trial court's attention."). To prevail under the plain-error doctrine, the challenging party must show (1) an error; (2) that the error was plain; and (3) that this error affected substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). When these three prongs are met, an appellate court then decides whether to address the error "to ensure fairness and the integrity of the judicial proceedings." *Id.* (citing *Johnson v. United States*, 520 U.S. 461, 467, 117 S. Ct. 1544, 1549 (1997)).

The district court's jury instruction defining domestic assault matched the statutory language. *See* Minn. Stat. § 609.2242, subd. 1(2). But appellant argues that the district court plainly erred by including the word "attempt" in this instruction. The state responds that no error occurred. We need not decide whether the district court plainly erred because any error did not affect appellant's substantial rights. *See State v. Vang*, 847 N.W.2d 248, 261 (Minn. 2014) (not analyzing first two prongs of plain-error doctrine because the third prong was dispositive).

To affect a defendant's substantial rights, an error must be prejudicial and impact the trial's outcome. *State v. Wenthe*, 865 N.W.2d 293, 299 (Minn. 2015). "An error in instructing the jury is prejudicial if there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury's verdict." *State v. Huber*, 877 N.W.2d 519, 525 (Minn. 2016) (quoting *Watkins*, 840 N.W.2d at 28). The defendant carries the "heavy burden" of showing prejudice. *Griller*, 583 N.W.2d at 741.

At trial, the state never argued that appellant was guilty of felony domestic assault if he simply attempted to assault T.H. And the state's case focused on a completed assault,

evidenced by T.H.'s trial testimony and photographs showing her injuries during a medical examination after the altercation with appellant. Put differently, the state submitted only one theory of guilt to the jury on the felony-domestic-assault offense—a completed assault. Also important to our decision is the lack of the word "attempt" in the district court's instruction defining "assault."

In urging reversal, appellant argues that the jury's not-guilty verdict on the domestic-assault-by-strangulation charge amplifies the alleged error. But substantial record evidence, noted above, shows that appellant inflicted bodily harm against T.H. separate from the alleged strangulation. *See State v. Larson*, 787 N.W.2d 592, 601 (Minn. 2010) (holding that any error in instructing the jury did not affect the appellant's substantial rights because the record contained "considerable evidence" of her guilt). Because this case involved a completed assault, there is no reasonable likelihood that the district court's allegedly erroneous jury instruction significantly affected the jury's verdict.

In sum, appellant has not met his burden of showing that the district court's alleged instructional error affected his substantial rights.

Affirmed.